

January 30, 2007

The Honorable Valerie Woodruff
Secretary of Education
401 Federal Street
Dover, DE 19901

RE: 10 DE Reg. 1140 [Final Shared Planning & Improvement Grant Regulations]

Dear Secretary Woodruff:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE) final planning and improvement grant regulations published as 10 DE Reg. 1140 in the October 1, 2006 issue of the Register of Regulations. SCPD commented on the proposed version of these regulations in November 2006. Council has the following observations.

First, the Councils recommended that grant applications include the "results" of efforts to communicate with constituent groups. No amendment resulted.

Second, the Councils recommended that a minimum time period for posting the "report and recommendations" be included in the standards, as well as a requirement for posting on the district's website. No amendment resulted.

Third, the Councils noted that the Delaware Code contains a deadline of May 1, 2000 for decision-making grants, suggesting that some of the regulations could be moot. No amendment resulted and no explanation was provided.

Fourth, the Councils noted that all of the DOE regulations published in the Register omitted required information (e.g. method and timetable for submission of comments on proposed regulations). The Department agreed to prospectively include "the cut off date for comments as well as the name and address of the person that should receive the comments" as part of the regulatory synopsis.

Fifth, SCPD respectfully requests that the DOE assess its compliance with the APA, Title 29 Del.C. §10118(a). This statute requires the DOE to provide "a brief summary of the ...information submitted" and "findings of fact" on the information submitted. As part of

a deliberative process, the decision to adopt or revise the regulations must then be based on the findings. In this case, SCPD comments are not summarized. The only reference is that the Councils recommended “some changes to add clarity to the regulation”. This is not a meaningful summary compliant with the APA. Likewise, there is no summary of findings explicating why the DOE rejected the Councils’ recommendations. The APA does not require an “epistle” but it does contemplate inclusion of some rationale for acceptance or rejection of comments. A copy of the request should be shared with the Register of Regulations. SCPD truly appreciates the collaborative approach between the Department and Council and would prefer that DOE prospectively adhere to the requirements of the APA.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulations.

Sincerely,

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

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